

The Gazette



of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 265] NEW DELHI, TUESDAY, OCTOBER 13, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th October 1953

S.R.O. 1910.—Whereas the election of Shri Rudra Deolal and Shri Kishori Lal, as members of the Legislative Assembly of the State of Madhya Bharat, from the Pichhore Bhandair constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jagdish Singh, s/o Rao Bahoran Singh, Village Sirsod, Pargana Pichhore, District Gird;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, GWALIOR, MADHYA BHARAT

ELECTION PETITION No. 176 OF 1952

Election Petition under section 81 of the Representation of the People Act,
No. XLIII of 1951.

PRESENT:

Shri V. K. Dongre, M.A. LL.B.—*Chairman.*

Shri Suraj Bhan, B.A. B.—*Member.*

Shri Bhagwan Swarooj Advocate—*Member.*

Jagdish Singh son of R. Bahoran Singh, Caste Thakur, resident of village Sirsod, Pargana Pichhore, District Gird—*Petitioner.*

Versus

1. Shri Rudra Deolal, s/o Syamlal, Caste Brahman, Resident of Fort Road, Gwalior;
2. Shri Kishorilal, s/o Sukhram, Caste Chamar, Resident of Morar in front of Kappany Garden;
3. Shri Anand Behari Mishra, s/o Krishna Beharilal Mishra, Caste Brahman, Resident of Sarafa Lashkar;
4. Shri Bhargava Babulal, s/o Baldeo Prashad, Resident of Sarafa Bazar, Lashkar;
5. Shri Krishnanand, s/o Ramcharanlal, Caste Brahman, Resident of Bhandar, District Gird;

6. Shri Upadyay Visheshwar Dayal, s/o Lakhminarain, Caste Brahman, Resident of Antri, District Gird;
7. Shri Umacharanlal, s/o Raghunath Prashad, Caste Brahman, Resident of Village Bhagch, Pargana Pichhore, District Gird;
8. Shri Harcharanlal, s/o Kashinath, Caste Brahman, Resident of village Chhimak, Pargana Pichhore, District Gird;
9. Shri Bhanwar Singh Rana, s/o Nahar Singh, Caste Jat, Resident of Jat Boarding House, Lashkar;
10. Shri Chhaviram, s/o Randhir, Caste Nai, Resident of Ward 5, Halka 8, Lashkar;
11. Shri Deolal, s/o Ram Dayal, Caste Chamar, Resident of Antri, Pargana Pichhore, District Gird;
12. Shri Pathik Ramswaroop, s/o Panna Lal, Caste Kayasth, Resident of village Behat, District Gird;
13. Shri Baij Nath, s/o Gapoo, Caste Ghoshi, Resident of village Jargaon, Pargana Pichhore;
14. Shri Bhagwandas, s/o Dhansingh, Caste Kori, Resident of J. C. Mills Line, Gwalior;
15. Shri Bhagirath, s/o Mattu, Caste Chamar, Resident of village Kuttauli, Pargana Bhandar;
16. Shri Lalu, s/o Ganga, Caste Chamar, Resident of Dabra, District Gird;
17. Shri Harinarain, s/o Buddharam, Caste Chamar, of Balabal Ka Bazar, Lashkar—Respondents.

Counsels for Petitioner:—

Messrs. A. N. Kak and K. Kak, Advocates of Gwalior.

Counsel for Respondent Nos. 1 and 2:—

Shri Harihar Niwas Dwivedi, M.A., LL.B., Advocate of Gwalior.

JUDGMENT

1. This is an election petition under section 81 of the Representation of the People Act, by Shri Jagdish Singh, who was a candidate for the election to the general seat from the Pichhore Bhandar, a double member constituency, No. 75, of the Madhya Bharat Legislative Assembly, challenging the election of Shri Rudra Deolal from that constituency on various grounds. The petitioner secured 553 votes less than respondent No. 1. The main grounds on which the petitioner seeks to have the election declared void are: (1) that the total number of ballot papers issued to the different polling stations of the said constituency was less than the actual number of ballot papers found at the time of counting of votes; (2) that the nomination forms of respondent Nos. 1 and 4 were not duly filled, their acceptance by the Returning Officer was illegal; (3) that the nomination paper of respondent No. 1 was accepted by Mr. Desai, who was not the Returning Officer of the said constituency; (4) that the ballot papers used at Pichhore Polling Station No. 29/2, were those of the Parliamentary Constituency, (5) that respondent Nos. 7, 13 and 8 (Shri Umacharanlal, Shri Baijnath and Shri Harcharanlal) are Patels and were holding the office of profit under the Government of Madhya Bharat; (6) that respondent No. 4 Shri Babulal Bhargava did not possess the requisite qualifications to stand as a candidate, as his age at the time of filing the nomination form was only 22 years. He secured 3000 votes. The illegal and improper acceptance of his nomination paper has materially affected the result of the election, as the majority of votes cast in favour of respondent No. 4 would have been cast in favour of the petitioner; (7) at Dabka Polling Station the ballot boxes of the General and Reserved candidates were placed in two separate and different rows and the officials instructed the voters to caste one vote in the general candidate's boxes and the other in the boxes of Reserved candidates. This method confused the voters. The petitioner filed an objection on 15th January 1952 to the Returning Officer and other higher officials. The Returning Officer ordered for the repolling of the Dabka Polling Station and fixed 25th January 1952 as the date for repolling which did not take place. The illegal conduct of the election has materially affected the result of the whole election; (8) the ballot boxes used were not of the prescribed design. They were defective. Ballot papers could be taken out from and inserted in them; (9) the ballot boxes were not properly sealed. The seals of two ballot boxes at Dabka were found broken, while a ballot box of Kheri Parashar was tampered with by hammers.

2. The petitioner has prayed that the election of the Pichhore Bhandar Constituency No. 75 be declared void, or the election of respondent No. 1 be declared void and the petitioner be declared elected in this place.

3. Respondent Nos. 1, 2, 4, 10 and 14 filed written statements, but the petition is contested only by respondent Nos. 1 and 2, the successful candidates.

4. Respondent Nos. 1 and 2 have admitted the number of votes polled by the petitioner and respondent Nos. 1 and 2, and have either not accepted or denied most of the allegations made by the petitioner and have said that the allegations are vague, incomplete and not clear. Regarding para. No. 6 of the petition, the respondents have said that this fact has no bearing on the result or conduct of the election and cannot be considered as any ground for acceptance of the petition. The respondents have also said that no specific grounds under sections 100 and 101 of the R.P. Act are mentioned in the petition. There are no allegations about prayer No. 2 in para. No. 12 of the petition. Prayer No. 3 of the petition makes the petition infructuous as the election cannot be declared void only against respondent No. 1. The petition should be rejected as Shri Ramcharanlal, a duly nominated candidate, has not been made a party to the petition under section 82 of the R.P. Act.

5. The following issues were framed:—

- (1) Whether the total number of ballot papers issued for the different polling stations was less than the number of the ballot papers found at the time of counting the votes. If so, whether this disparity has affected the election materially.
- (2) Whether the nomination papers of Shri Rudra and Shri Bhargava (respondent Nos. 1 and 4) were not duly filled and have been thus illegally accepted by the Returning Officer. If so, has it materially affected the election.
- (3) Whether the nomination paper of Shri Rudra was accepted by an authority who was not competent. What is its result?
- (4) Whether the ballot papers meant for parliamentary constituency were used for the assembly constituency at polling station Pichhore. If so, whether it was an illegality affecting the validity of the election?
- (5) (i) whether respondent Nos. 7, 8 and 13 (Shri Umacharanlal, Shri Harcharanlal and Shri Baijnath) were Patels and as such held offices of profits under the Government.
(ii) If so, whether their nomination papers were accepted improperly. If the issue is decided in affirmative does it affect the result of the election materially.
- (6) Whether Shri Babulal Bhargava respondent No. 4 was twenty-two years old when he submitted his nomination paper. If so, whether his nomination paper has been accepted improperly. If the issue is decided in affirmative has it materially affected the result of the election. Is this objection regarding age entertainable before this Tribunal.
- (7) Are the allegations contained in para. No. 10 of the petition true and correct. If so, have they materially affected the result of the election.
- (8) Whether the ballot boxes used for this election were not of prescribed design and were defective and ballot papers could be taken out and inserted in the boxes without breaking the seals or opening the boxes.
- (9) Whether the ballot boxes were not properly sealed. If so, whether it was an illegality affecting the validity of the election.
- (10) Whether the seals of two ballot boxes at Dabka and one at Kheri Parashar were tampered with. If so, whether this was an illegality affecting the validity of the election.
- (11) Whether the election of respondent No. 1 could be declared void in view of objections raised by respondent Nos. 1 and 2 in para. 15 of their written statements.
- (12) Is the petitioner entitled to the declaration that the election of Shri Rudra Deolal is void and the petitioner has been duly elected.
- (13) To what relief is the petitioner entitled.
- (14) Is the petition not entertainable for grounds given in para. 14 of the written statements of respondents Nos. 1 and 2.
- (15) Whether the petition suffers from vagueness and incompleteness and what is the effect?

- (16) Whether the provisions of section 83(2) have not been complied with.
- (17) Whether the petition is not properly verified.
- (18) Is the petition bad for non-joinder of Ramcharan Lal Upadhyaya as respondent. What is the effect?

6. Issue Nos. 15, 16 and 17 have been decided by our order dated the 17th December, 1952 (annexure 'A').

7. Including the petitioner 59 witnesses have been examined on behalf of the petitioner and 3 on behalf of the Respondents. There are 38 exhibits produced by the petitioner and 10 by the respondents.

8. *Issue No. 1.*—The allegation made by the petitioner is that the number of ballot papers issued from the office of the Returning Officer was 50,800, where as at the time of counting, 51,183 ballot papers were found in the ballot boxes. In support of this allegation the petitioner has examined the Returning Officer Shri Ramashankar Chaturvedi P.W. 46 and has brought on record Exhibits 16, 17, 18 and 19. Exhibit 18 is a rough statement of ballot papers. It does not bear the signature of any officer, and the person who prepared it being unknown, is not produced in evidence. Exhibit 19 is a statement of ballot papers. Shri Ramashankar Chaturvedi has said that this statement is written by his clerk but the abstract at the end is written by him. According to this abstract 180,000 ballot papers appear to have been issued and 1, 27,491 have been returned by the Presiding Officer, thus 52,509 ballot papers appear to have been actually given to voters. According to this abstract 51,161 ballot papers have actually been found in ballot boxes and the number of valid votes is 48,714.

9. Exhibits 16 and 17 are statements regarding distribution of ballot papers to polling stations. Shri Chaturvedi has said that these statements bear the signatures of Tehsildars (Assistant Returning Officers) who were in charge of the work. According to these two statements 68700 ballot papers appear to have been distributed for use to various polling stations by assistant Returning Officers. These two exhibits (16 and 17) do not help the petitioner. Taking into consideration Shri Chaturvedi's (who is petitioner's witness) statement we find that there is no evidence on record in support of the petitioner's allegation that more ballot papers were found in boxes than were issued or distributed for use. Mr. Kak, counsel for the petitioner has requested that the number be ascertained from the record. Looking to the evidence on record, we find that the allegation made by the petitioner is without substance, hence we do not think it necessary to check the record kept by the Returning Officer. We decide issue No. 1 against the petitioner.

10. *Issue No. 2.*—In para. No. 5 of the petition a vague allegation is made that the nomination papers of Respondent Nos. 1 and 4 were not duly filled. During the course of argument no specific instances regarding defects in filling of the nomination papers have been brought to our notice. On perusal of the nomination papers and the objections made before the Returning Officer, we find the allegation regarding the filling of nomination papers of respondent Nos. 1 and 4 without substance and hence we decide this issue against the petitioner.

11. *Issue No. 3.*—The allegation made in the petition is that the nomination paper of respondent No. 1 was accepted by Mr. Desai who was not the Returning Officer of the said Constituency, so he had no power or authority to accept the said nomination paper. The only oral evidence in this respect is the statement of Shri Ramashankar Chaturvedi, P.W. 46. He has said that he was Returning Officer of Pichore Bhandar and Ghatigaon Constituencies. Along with the letter of the Chief Electoral Officer, Madhya Bharat (Ex. 10), he received a copy of the Notification of the Election Commission of India, dated the 26th September, 1951 (Ex. 11) in which Naib Suba Gird is designated as the Returning Officer of Pichore Bhandar Constituency. Gird had two Naib Subas, so the Collector by his letter, dated 19th November 1951 (Ex. 12) appointed him for Pichore Bhandar Constituency. The nomination papers of Pichore Bhandar Constituency were presented to him on 19th and 20th November, 1951. The scrutiny took place on 23rd November 1951 and on that date he passed orders on all the nomination papers, except that of Deolal Rudra (Respondent No. 1.). On 23rd November 1951 objections were raised regarding Rudra Deolal's nomination paper, as there was no time he put that nomination paper for the next day. On 24th November 1951 Shri Waman Rao Desai, who was Naib Suba heard the objections, decided them and accepted the nomination paper.

12. Shri Chaturvedi has said that on 23rd November 1951 it was discovered that the Election Commission had designated only one Naib Suba as Returning Officer, so the Collector asked Shri Desai to work as Returning Officer for this

Constituency. Shri Desai came at 3-30 p.m. on 23rd November 1951 and joined him and he did not work on the next day as the Collector told him that Shri Desai would work in his place.

13. From Ex. 11 it appears that the Election Commission has designated Naib Suba Gird as Returning Officer for Pichore-Bhander Constituency and Naib Suba, Gwalior, for Ghatigaon Constituency and Additional District Magistrate, Gwalior for Lashkar, Gwalior and Morar Constituencies. On the basis of this Notification Ex. 11, the Collector of Gird-Gwalior distributed the work between two Deputy Collectors of Gird, as there are no separate Deputy Collectors for Gird and Gwalior. He put Shri Chaturvedi in charge of Pichore-Bhander Constituency and Mr. Waman Rao Desai in charge of Ghatigaon and asked sanction from the Chief Electoral Officer, Madhya Bharat (letter, dated 11th November 1951, Ex. 12). The Chief Electoral Officer did not sanction this arrangement. He informed the Collector on telephone and sent a letter No. 8757, dated 24th November 1951 in which it is stated that Deputy Collector, Gird-Gwalior has been appointed as Returning Officer for Ghatigaon and Pichore-Bhander Constituencies, so this work cannot be distributed between two officers of the same status. On this letter the Collector of Gwalior seems to have ordered Shri Desai (who appears to be senior one) to work as Returning Officer for Ghatigaon and Pichore-Bhander Constituencies. From Ex. 12 it appears that Gird-Gwalior is the name of the District and both the Deputy Collectors are for Gird. There is no dispute regarding the fact that Shri Desai was one of the Deputy Collectors of Gird and the Election Commission has appointed Naib Suba (Deputy Collector) Gird as Returning Officer of Pichore-Bhander. As this appointment is not by name, but by designation, it cannot be said that Shri Desai who was Naib Suba of Gird was not the Returning Officer and so had no power or authority to deal with the nomination paper of respondent No. 1. Mr. Kak, the learned counsel for the petitioner has tried to argue that if Shri Desai was competent, then the nomination papers accepted by Shri Chaturvedi on 23rd November 1951 have been improperly accepted. We only dispose of this argument by saying that there is no such alternative objection made in the petition, so we cannot deal with it. Shri Kak has drawn our attention to Doabia's Election Cases 1884-1935, Vol. I, page 108 and 1935-50, Vol. I, page 1. These cases are not relevant as in both these cases there was no proper appointment of or delegation of power to persons who acted as Returning Officer.

14. Though it is somewhat unfortunate that the Collector did not properly understand or appreciate the implication of the notification of the Election Commission (Ex. 12) and distributed the work between two Deputy Collectors, so far as the objection of the petitioner regarding Shri Desai's powers is concerned, the Collector's mistake does not help the petitioner.

15. We are of opinion that Mr. Desai being Naib Suba of Gird had jurisdiction to deal with Shri Deolal Rudra's nomination paper and it cannot be said that Shri Rudra's nomination paper was accepted by an authority who was not competent. Hence issue No. 3 is decided against the petitioner.

16. Issue No. 4.—It is alleged that at Pichore Polling Station No. 29/2, the ballot papers for Parliamentary Constituency were used for the Assembly Constituency. Shri K. N. Watal, P.W. 26, who was the Presiding Officer of Pichore Polling Station has said that ballot papers for Parliamentary seat were used for Assembly seat and *vice versa*, the cause was that the duties of clerks in charge of those two seats were inter-changed and they took with them the ballot papers they had with them. After 8 or 10 votes were cast this mistake came to his notice and he allowed it to continue till the end of the Polling. A report was sent to the Returning Officer and this irregularity was condoned by the Election Commission. The witness has also said that there was no confusion to voters. Shri Ramashankar Chaturvedi, P.W. 46, who was Returning Officer, has said that he received a report Ex. 29 regarding exchange of ballot papers from the Presiding Officer, Pichore Polling Station. He informed the Chief Electoral Officer, Madhya Bharat, and the Election Commission for India, condoned this mistake (*vide* Ex. 31). From the statements of P.Ws. 26 and 46 the fact of interchange of ballot papers is established. P.W. 46 has said that the arrangement of polling booths was such that no voter could have gone out without giving both votes. The petitioner has not said anything in the petition about the consequences of this irregularity on the result of the election nor is there any evidence on record on this point. As the interchange of ballot papers was consistent (or continued) throughout the polling hours, in our view, it could not materially affect the result of the election, hence we decide issue No. 4 against the petitioner.

17. Issue Nos. 5(1) and (2).—The petitioner's allegation is that Shri Umacharanlal, respondent No. 7, Shri Harcharanlal, respondent No. 8, Shri Bajinath, respondent No. 13 were Patels and as such held offices of profit under the Government; their nomination papers were thus improperly accepted,

18. The material facts relating to this issue are that the Madhya Bharat Zamindari Abolition Act, Samvat 2008 came into force on 26th June, 1951 and in pursuance of sub-section 1 of section 3 of the said Act, the Government of Madhya Bharat specified 2nd October, 1951 as the date on which all proprietary rights affected by the said Act, were to pass and vest in the State of Madhya Bharat (*vide Madhya Bharat Gazette*, dated the 7th September, 1951, Notification No. 5710/IX-D.A./25). Section 42(1) of the Madhya Bharat Zamindari Abolition Act, Samvat 2008, provides that on and from the date of vesting, every lambardar shall cease to act and the Suba shall in accordance with the rules made in this behalf, appoint a person as Patel for each village. In exercise of the powers conferred under section 52(2) (g) of the Madhya Bharat Zamindari Abolition Act, Patel Appointment Rules were promulgated on 28th July, 1951. Under rule 5 of the said Rules, the Tehsildar has to nominate a Patel for every village and under rule 6 the list of names of the persons nominated as Patels is to be forwarded to the Collector of the District for sanction of the appointments. The rule also requires that such appointment shall be notified in the Government Gazette. In accordance with the procedure laid down in the Patel Appointment Rules, the Collector of Gwalior sanctioned the appointments of Patels and published the list in the *Madhya Bharat Government Gazette*, dated 22nd September, 1951. At the top of the lists of each Pargana, it is stated that the following persons are appointed as Patels from 2nd of October, 1951 for one year. The names of Shri Harcharanlal, respondent No. 8, Shri Baijnath, respondent No. 13 and Shri Umacharanlal, respondent No. 7 appear in the published list, on serial Nos. 68, 76 and 144 on pages 621 and 622 of the *Madhya Bharat Government Gazette*, dated the 22nd September, 1951. Shri Ram Rao Deshmukh, P.W. 27, Tehsildar, Pichore, has said that Umacharanlal, Harcharanlal and Baijnath are Patels. They were informed of their appointment as Patel. They have signed the notice informing them of their appointment. Baijnath's signature is dated 26th September, 1951 and Harcharanlal has put in the date 27th September, 1951 under his signature. Baijnath, P.W. 41 and Harcharanlal (P.W. 57) have been examined by the petitioner and both of them have said that they got information about their appointments as Patels on 26th September, 1951 and 27th September, 1951 respectively.

19. From the record before us, it is quite clear that respondent Nos. 7, 8 and 13 were appointed as Patels by the Collector from 2nd October, 1951, their names were published in the *Madhya Bharat Government Gazette* and they were personally informed long before 20th November, 1951 the date of the filing of the nomination papers.

20. On the basis of the facts mentioned above Shri A. N. Kak, counsel for the petitioner has argued that respondent Nos. 7, 8 and 13 were holding the office of Patel on the date of filing of the nomination papers. He has drawn our attention to the decision of this Tribunal in Election Petition No. 101 of 1952 published in the *Gazette of India*, dated the 22nd June, 1953 on page 2097.

21. The contention of Shri Dwivedi, counsel for respondent Nos. 1 and 2 is that respondent Nos. 7, 8 and 13 were appointed as Patels from 2nd October, 1951. In the meantime, on a petition for a writ of mandamus the Hon'ble High Court of Madhya Bharat passed an interim injunction on 1st October, 1951. In the face of this injunction, the respondent Nos. 7, 8 and 13 could not hold the office of Patel. Shri Dwivedi has drawn our attention to the decision of the Indore Tribunal in Election Petition No. 92 of 1952 published in the *Gazette of India*, dated the 1st April, 1953 on page 1009.

22. The injunction is in the following words:—

"We, therefore, direct the Government to forbear until the disposal of the petition impeaching the vices of the Zamindari Abolition Act, from taking actual possession of the lands mentioned in section 3 of the said Act, in a manner other than that of an issue of a proclamation, by or on behalf of the Collector on 2nd October, 1951 in terms of the form of proclamation attached to the undertaking of the Government, given on 1st October, 1951."

In our view, this order of the Hon'ble High Court does not affect the appointments of Patels already made. The intention of this order appears to be to maintain *status quo*, and not to undo what has already been done. We are unable to agree with the view taken by the Indore Tribunal, that in view of the High Court Order there was no office of Patel which could be held. Our view is that when the vesting had taken place and the appointments of Patels were duly made before the High Court Order, dated 1st October, 1951 the persons appointed could hold that office, though they could not work for the time being or the scope of their work was restricted.

23. In view of rule 9 of the Patel Appointment Rules, it is evident that the office of Patel is an office of profit as Patels are entitled to a remuneration of

3½ per cent. on the land revenue realised. It has been held so in Election Petition Nos. 92 of 1952, 221 of 1952 and 101 of 1952.

24. Considering the whole material before us we are of opinion that respondent Nos. 7, 8 and 13 held the office of Patel, which is an office of profit on the date of filing of nomination papers and as such their nomination papers have been improperly accepted.

25. Now we take the second portion of issue No. 5(2). The words of section 100(1) (c) of the R. P. Act are as follows:—

"If the Tribunal is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination the Tribunal shall declare the election wholly void." There is paucity of case law on the point of the result of improper acceptance of nomination paper and conflicting views are held, in the decisions available, as regards the burden of proof. In the case before us, though the issue regarding the effect on the result is there, the petitioner has not alleged in the petition that the improper nominations of respondent Nos. 7, 8 and 13 have materially affected the result of the election. We have gone through the whole volume of evidence and we find that with the exception of 2 or 3 witnesses, the rest of the witnesses have only said that they voted for these Patels as they wielded influence. They do not say that in the absence of these three candidates, they would have voted for the petitioner. Shri Kak, counsel for the petitioner relying on the case reported in Doabia's Election Cases (1935-50), Vol. II, page 263 has said that these three candidates have in all scored 5,074 votes and if these candidates had not been in the field the result in all probability would have been different. Taking into consideration the words of section 100(1) (c) of the R. P. Act and the cases cited by the learned counsels on both sides, viz., Doabia's Election Cases (1864-1935), Vol. I, pages 45, 178, 246; 1935-50, Vol. II, page 263; Gazette of India, dated the 2nd February, 1953, page 234, dated 5th April 1953, page 1063 and Doabia's Election Cases (1864-1935), Vol. I, pages 178 and 218, we are of view, that the question whether or not the result of election is materially affected is a question of fact and must be determined in each case on the basis of the material on record and not on mere probabilities. If it is possible, though there is no evidence to think of this possibility, that in the absence of respondent Nos. 7, 8 and 13, a major portion of the votes they got, would have gone to the petitioner, the *vice versa* is also possible, so we do not think it proper to disturb the verdict of the electorate merely on the basis of possibilities. In the case of improper rejection of nomination, the whole electorate is deprived of its right to vote for a candidate, who was legally entitled to stand, whereas in the case of improper acceptance the disqualified candidate is there in the field with other candidates and every one on the electoral roll has an opportunity of voting for the candidate he prefers. We need not consider the second preference of the voters. Hence in the former case there is presumption that the election has been materially affected, whereas in the latter case the petitioner must prove by affirmative evidence, though it may be difficult, that the result has been materially affected. Considering the petitioner's evidence, we are definitely of opinion, that the improper acceptance of the nominations of respondent Nos. 7, 8 and 13 has not materially affected the result of the election. We decide issue No. 5(1) and the first portion of issue No. 5(2) in the affirmative and the second portion of the issue No. 5(2) in the negative.

26. Issue No. 6.—The allegation in the petition is that respondent No. 4 (Babulal Bhargava) was 22 years of age at the time of the filing of the nomination paper, as such he was not qualified to stand as a candidate and the majority of votes cast in his favour would have been cast in favour of the petitioner. In support of the allegation regarding age, the petitioner has filed the school leaving certificate of Babulal and other entries in College register and forms Exs. 5, 6, 7, 8 and Ex. 35 (copy of a statement of Babulal) and has examined Yeshwant-singh, clerk of the Victoria College, Gwalior and Babulal, respondent No. 4. In Exs. 6, 7 and 8 the date of birth of Babulal is stated as 21st November 1927. Babulal, P.W. 52 in his statement has admitted that Ex. 5, which is an application form for admission to Victoria College, has been filled by him and in it he has written his date of birth as 21st November 1927, he has also admitted that in his statement on oath, dated 7th September, 1951, Ex. 35, he has declared his age as 21 years. In cross-examination he says that he was born in Samvat 1881. His explanation is that at the time of his admission in Gorkhi Middle School, his relative had accompanied him, who did not know his age, hence a wrong entry was made and he continued to write that age afterwards. On behalf of the respondents, Hari Shankar, R.W. 3, has been examined. He has produced a Panchang Ex. A/10, which has following entry 'Miti Magh Krishna 7 Shaniwar Ko Ladka Bhaya Din Ke 10 Bajke 15 Minute Per Baldeo Prasad Karbhari Ke' and has said that this entry is in the hand of his Tauji Durga Prasad who is dead. This witness

does not know when the entry was made and when Babulal was born. In cross-examination the witness has said that at the time of the general election, Babulal had come to him and asked him to prepare a horoscope, so he searched the Panchang and prepared the horoscope. This portion of the statement clearly shows that Babulal wanted to have evidence of his age at the time of election, different from his school leaving certificate and entries in college records. It is not improbable that he got the entry Ex. A/10 made to suit his purpose. Babulal's mother who could have given the correct date of birth of Babulal was summoned by the respondents and later on the respondents took time to produce her for statement but she was not produced. This clearly shows that she was unwilling to support her son in his lies.

27. Whatever may be the value of other entries, we cannot ignore the entry in Ex. 5 about the date of birth (21st November 1927) in Babulal's own hand, in the year 1946, and his statement, dated 8th June 1951 in which Babulal has given his age as 21 years. The fact that Babulal never seriously tried to get his age corrected in the College record is also significant.

28. Considering the whole evidence before us, we have no hesitation to say that the date of birth of Babulal is 21st November 1927. The dates for filling the nomination paper, scrutiny and the starting of polling were 20th November 1951, 23rd November 1951 and 3rd January 1952 respectively. Even on the last of these three dates Babulal was only 24 years and 1½ months old.

29. Article 173 of the Constitution of India says that a person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he is not less than 25 years of age.

30. Babulal respondent No. 4 appears to be only 24 years of age at the time of the nomination as such in view of article 173 of the Constitution of India, he was not qualified to stand as a candidate, hence we hold that his nomination paper has been improperly accepted.

31. In connection with issue No. 5(2) we have said that the question whether or not the result of the election is materially affected is a question of fact and must be determined on the basis of material on record. Though in the petition, it is said that majority of votes cast in favour of respondent No. 4 would have been cast in favour of the petitioner, there is no evidence worth the name in support of this allegation. Babulal Bhargava respondent No. 4 (P.W. 52) has said, in his cross examination that he stood as a socialist candidate, whereas Deolal Rudra and Rao Jagdishsingh were Congress and Hindu Sabha candidates respectively and on the basis of the ideologies of the parties and the caste of respondent Nos. 1 and 4, the votes cast in favour of him would have gone to Deolal Rudra. Though the petitioner Shri Jagdish Singh has said in his statement that the votes given to respondent Nos. 7, 8 and 13 and Babulal Bhargava would have been given to him if they had not been in the contest, there is no other evidence in support of this statement. Hence, in our view, there is no material on record to come to a finding that the result of the election has been materially affected by the improper acceptance of Babulal's nomination paper.

32. In connection with issue No. 5(2) and this issue, Mr. Kak the counsel for the petitioner has said that in all, on account of the improper acceptance of the nomination of respondent Nos. 7, 8, 13 and 4, eight thousand seventy-four votes have gone to waste, hence it should be considered that the result of the election has been materially affected. Our reply to this argument is that the constitution of India gives every adult person (who is not otherwise disqualified) a right to vote and we are not concerned what use a citizen (voter) makes of his right. In the present case the whole electorate had an opportunity to vote for the petitioner.

33. It is settled law that the Election Tribunal can go behind an electoral roll and investigate a question of want of qualifications of a candidate. In this case, the disqualification of Babulal is alleged to be his age, so we can enquire into it.

34. We decide the first part of issue No. 6 viz. (that Babulal's nomination paper was improperly accepted) in favour of the petitioner and the second (about the material effect on the election) and the third parts against the petitioner.

35. Issue No. 7.—The allegations in para. 10 of the petition, briefly stated are that at Dabka Polling Station No. 35, the ballot boxes of General and Reserved Seats were kept in different rows and the officials instructed the voters to cast one vote in each row. The Returning Officer accepted the objection of the petitioner and fixed 25th January 1952 as the date for repolling but the repolling never took place.

36. Nearly 25 witnesses on behalf of the petitioner have said that the ballot boxes of the General and Reserved seats were kept in two different rows. Some of these witnesses have said that the officials instructed the voters to drop one vote in each row, whereas some say that no such instructions were given. Shri Anirudh Singh, P.W. 23, who was the Presiding Officer at Dabka, has admitted that the boxes were kept in different rows, but he says that no instructions were given to the voters regarding casting of votes. Shri Kailashnarayan, P.W. 25, who was on duty in the Polling Station, also says that no instructions regarding the casting of votes were given. Considering the whole of the evidence, we are of opinion that the ballot boxes were kept in two rows, but it is not established that the voters were instructed to cast one vote in each row.

37. Regarding repolling Shri Ramashankar Chaturvedi (P.W. 46), who was the Returning Officer said that Rao Jagdish Singh gave him an application Ex. 32 and he referred the matter to the Election Commission by sending telegram Ex. 33, suggesting repoll, and in anticipation that repoll would be ordered, he fixed 25th January 1952 as date for repolling. From Ex. A/5 it appears that the Election Commission did not consider fresh poll necessary, hence repolling did not take place on 25th January 1952. From Ex. A/5 it is clear that the Election Commission did not think the irregularity of keeping of ballot boxes in two rows of sufficient importance. At Dabka 228 ballot papers were issued, the petitioner has got the highest numbers of valid votes i.e., 98, whereas respondent No. 1 has scored only 11. Considering the distribution of votes at this polling station we do not think that the irregularity of keeping the ballot boxes for general and reserved seats in two rows, has materially affected the result of the election, hence we decide issue No. 7 in the negative.

38. Issue No. 8.—There is no evidence on record in support of the allegation made regarding the ballot boxes. Shri Anand Behari, P.W. 58, has frankly said in his cross-examination that he never made an experiment to see that ballot boxes could be easily opened and closed. The ballot boxes that have been brought before us, are of the type used in General Election every where. We do not find any weight in the objections regarding ballot boxes and hence decide issue No. 8 in the negative.

39. Issue No. 9.—Shri Anand Behari Mishra is the only witness who has vaguely said that there were good many ballot boxes in which the paper seal on one end was pasted and the other end was unpasted. For want of sufficient evidence we decide this issue in the negative.

40. Issue No. 10.—The allegation made by the petitioner is that the seals of two ballot boxes at Dabka were found broken and one ballot box of Kheri Parashar was tampered with by hammers. Shri Anand Behari (P.W. 58), who is respondent No. 3, has said that from the appearance of one ballot box it appeared that it had been hammered and on another ballot box there was a thumb mark on the paper seal indicating that it was pressed. Shri Mishra appears to have made good many objections at the time of counting and it seems that the Returning Officer has not thought them of sufficient importance. At present we are only concerned with the condition of these ballot boxes. From Ex. 20, 26 and 27, along with the statement of Shri Ramashankar Chaturvedi, P.W. 46, we think that the allegation regarding hammering and tampering of three ballot boxes has no weight. Besides, we have not been shown how it has affected the result of the election hence we decide issue No. 10 in the negative.

41. Issue Nos. 11, 12 and 14.—The contention of the respondents is that it is not clear whether the petitioner has prayed for getting the election declared void or for declaring the election of respondent No. 1 void, and in para. 12(3) of the petition the petitioner has asked relief only against respondent No. 1, as the election of only respondent No. 1 cannot be declared void, the petition is infratenuous. In his argument Mr. Kak counsel for the petitioner has said that in fact the petitioner wants prayer No. 1 to be given effect to and other prayers are in the alternative. We have considered sections 84, 98, 100 and 101 of the R.P. Act in this connection and we think that the main prayer of the petitioner is prayer No. 1 i.e., the election be declared void, and other prayers are in the alternative. As none of the grounds on which the election or the election of respondent No. 1 could be held void are made out, we do not think it necessary to give any finding on issue Nos. 11, 12 and 14.

42. Issue No. 13.—Since the petitioner has failed on the main issues [Nos. 1, 2, 3, 4, 5(2) second portion, 6 part 2, 7, 8, 9 and 10] he is not entitled to any relief.

43. Issue No. 18.—The contention of the respondent is that Shri Ramcharanlal, a duly nominated candidate has not been made a respondent under section 82 of the R.P. Act so the petition is not maintainable. Shri Ramcharanlal (R.W. 1)

has been examined by the respondents and he has said that his nomination paper was accepted and he withdraw and there is no dispute regarding this fact. The question before us is whether not making Shri Ramcharanlal (a withdrawn candidate), a respondent is fatal to the petition. Mr. Dwivedi's argument is that according to section 80, no election can be called in question except by an election petition presented in accordance with the provisions of Part VI of the R.P. Act and a petition in which the provisions of section 82 of the R.P. Act are not complied with, cannot be called a petition presented in accordance with the provisions of Part VI, hence the election cannot be called in question on the basis of such petition. In election petition No. 221 of 1952, published in the *Gazette of India*, dated the 5th May, 1953, page 1553 we have held that a candidate who has withdrawn his candidature is not a necessary party and as such his not being made a respondent is not fatal to the petition. We do not find any grounds for any change in the view taken by us, hence this issue stands decided against the respondents.

44. The result is that the petition should be dismissed.

ORDER

45. This election petition No. 176 of 1952 is dismissed. The petitioner shall bear his own costs and shall pay to respondent Nos. 1 and 2 Rs. 475-4-0 by way of costs as detailed below:—

			Rs.	A.	P.
Pleader's Fee for both respondents	..	..	250	0	0
Vakalatnamas for both respondents	..	..	1	4	0
Process Fees	..	..	9	0	0
Bhatta to witnesses	..	..	209	15	0
Miscellaneous applications	..	..	1	1	0
Inspection of records	..	..	4	0	0
TOTAL			475	4	0

Dated Gwalior, the 23rd September, 1953.

(Sd.) V. K. DONGRE, *Chairman.*

(Sd.) SURAJ BHAN, *Member.*

(Sd.) BHAGWAN SWAROOP, *Member.*

ANNEXURE 'A'

(Order, dated 17th December, 1952)

We have heard Mr. Kak for the petitioner and Mr. Hariharanlal Dwivedi for respondent Nos. 1 and 2 on issues Nos. 14, 15, 16 and 17.

It is considered desirable to decide issue No. 14 along with issue No. 12, so a decision on issue No. 14 is postponed for the present.

Issue No. 15.—Mr. Dwivedi has drawn our attention to certain paragraphs of the petition and has said that in para. No. 5 the specific provision of the constitution, the mistakes in filling the nomination form are not mentioned and in para. No. 6 the designation of Mr. Desai is not given. In para. No. 10 it is not clear as to who were confused, the Presiding Officer and his staff or the voters. Besides this, certain clerical mistakes have also been brought to our notice. There is no doubt that the petition has not been drafted with the care it deserved, all the same on careful consideration we are of opinion, that in spite of the unhappy wordings and certain errors in construction, the meaning could be understood and the respondents can properly meet the case. We also find that the objection regarding vagueness and incompleteness is not substantial, hence we decide issue No. 15 against the respondents.

Issue No. 16.—Mr. Dwivedi did not press this issue and as there are no corrupt and illegal practices mentioned in the petition, the question of the compliance of sub-section 2 of section 83 of the R.P. Act does not arise. Hence this issue stands decided against respondents.

Issue No. 17.—There are two objections regarding the verification:

- (1) There are two paragraphs numbered 10 in the petition. The petitioner has verified the contents of para. Nos. 1 to 11. Mr. Dwivedi's contention is that the Petitioner has not specifically mentioned both paras. numbered, 10 hence it cannot be said which of these two paragraphs the petitioner has verified. In our view, the verification of paragraphs 1 to 11 includes both the paragraphs which are numbered 10.

- (2) In the verification the petitioner has not stated date as required by Order VI, Rule 15, clause (3). It is true that this technical or formal defect is present in the petition. We have carefully considered the various authorities on defective verification. The trend of authorities is towards the view that a defect in verification is only an irregularity in procedure and will not be aground for rejecting the plaint. It is our considered opinion that the petition as verified does substantially comply with and satisfy the requirements of the rule. Hence we decide issue No. 17 against the respondents. Dated the 17th December, 1952.

(Sd.) V. K. DONGRE, *Chairman.*

(Sd.) SURAJ BHAN, *Member.*

(Sd.) BHAGWAN SWROOP, *Member.*

[No. 19/176/52-Elec.III/4128.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

